



**U.S. Department of Justice**

*United States Attorney  
Eastern District of New York*

ALB:OG  
F. #2019R01669

*271 Cadman Plaza East  
Brooklyn, New York 11201*

March 24, 2020

By ECF

The Honorable Ann M. Donnelly  
United States District Judge  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York 11201

Re: United States v. Michael Warren  
Docket No. 00-CR-1094 (AMD)

Dear Judge Donnelly:

The government respectfully submits this letter to reiterate its position that the defendant's motion for immediate release should be denied and that the permanent order of detention should remain in effect.

On March 19, 2020, the defendant filed a motion seeking immediate release from confinement because of general risks faced by incarcerated individuals during the COVID-19 pandemic. (ECF Dkt. No. 39.) On March 20, 2020, the government argued that the Court should deny the defendant's motion. (ECF Dkt. No. 40.) The government provided updates to the Court on March 22, 2020 and March 23, 2020, reporting that an inmate at the Metropolitan Detention Center ("MDC") tested positive for COVID-19 and that the inmate that tested positive was not housed in the same housing unit as the defendant. (ECF Dkt. Nos. 41 and 42.)

The government respectfully requests that the Court deny the defendant's motion for immediate release. In his March 19, 2020 motion, the defendant, who is 43 years old, does not assert that he falls within a high-risk category should he contract COVID-19. Rather, he sets forth general risks faced by incarcerated individuals.

As outlined in ECF Dkt. No. 40, the Bureau of Prisons has implemented national measures to mitigate the spread of COVID-19 within prisons. See Federal Bureau of Prisons COVID-19 Action Plan, available at [https://www.bop.gov/resources/news/20200313\\_covid-19.jsp](https://www.bop.gov/resources/news/20200313_covid-19.jsp).

These measures, which have been implemented at the MDC, include the following:

- Suspension of all social and legal visits: Social visits and legal visits have been suspended for 30 days, with case-by-case accommodations for attorney visits and legal calls. Inmates will be provided additional inmate telephone minutes each month.
- Inmate movement: All inmate facility transfers have been suspended for 30 days, with exceptions permitted for forensic studies or medical or mental health treatment.
- Screening and testing of inmates: All newly-arriving BOP inmates are screened for COVID-19 exposure risk factors and symptoms. Inmates with exposure risk factors are quarantined. In addition, inmates exhibiting flu-like symptoms are isolated (either to single rooms or with other patients) and tested for COVID-19 in accordance with local health authority protocols.
- Modified Operations: The BOP is implementing modified operations nationally to maximize social distancing and limit group gatherings in BOP facilities, among other modifications specific to each facility.

In addition, counsel at the MDC, after consultation with the relevant staff, has advised the government that inmates incarcerated at MDC, including the defendant, are permitted to take additional steps to self-seclude by remaining in their cells. Moreover, contrary to the defendant's claims, the government understands from MDC staff that (i) cleaning supplies are issued once a week, and all inmates have access to soap; (ii) inmate orderlies are cleaning the common areas of the institution; (iii) health services has identified those inmates who fall within an "at risk" population for COVID-19 and are monitoring the needs of those inmates as well as those of the rest of the population; (iv) showers are available on a daily basis; and (v) legal calls are being provided by unit team staff to maintain communication between inmates and their attorneys. Moreover, although the MDC is not one of the BOP's Federal Medical Centers, on a case-by-case basis, BOP's health professionals send inmates for consultations and treatments at New York City hospitals and other medical facilities. The availability of COVID-19 tests is generally limited nationwide, but the BOP is working to test inmates where needed.

As previously indicated, while an inmate at the MDC has tested positive for COVID-19, that inmate has been placed in isolation and the government can confirm that the defendant was not housed in the same housing unit as that inmate. Further, as set forth above, the BOP is monitoring the status of the COVID-19 virus and is taking emergency steps to ensure the safety of its staff, inmates and the public. The defendant is not uniquely situated with respect to the risk of infection of COVID-19, and his personal circumstances do not overcome the Court's obligation to consider whether the defendant has established, by

clear and convincing evidence, that he does not present a danger to the community or a flight risk. Accordingly, the permanent order of detention should remain in effect.<sup>1</sup>

Respectfully submitted,

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<sup>1</sup> On March 24, 2020, the Honorable Nicholas G. Garaufis summarily denied a similar application in United States v. Lipsky, No. 19-CR-203 (NGG).